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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1106

ARLENE MANSON,

Petitioner,

vs.

STATE OF INDIANA,

Respondent.

No. 1107

ARLENE MANSON,
JEFFERSON THOMAS SUBER,

Petitioners,

vs.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN J. DILLON
Attorney General of Indiana

DENNIS J. DEWEY
Deputy Attorney General
Attorneys for Respondent

219 State House
Indianapolis, Indiana
Phone: 633-5512

C. E. Pauley & Co., Inc., Indianapolis

INDEX

	Page
Questions Presented	1
Statement of Case	2
Reasons for Denying the Writ	3
Argument	4
The Admission of Evidence Discovered By An Arresting Officer In The Trunk Of An Automobile After An Arrest Pursuant To A Radio Dispatcher's Call, Coupled With A Personal Observation, Did Not Violate The Constitutional Tenets Of The Fourth and Fourteenth Amendments To The United States Constitution	4
Conclusion	11

CITATIONS AND AUTHORITIES

CASES: Page

Aguilar v. Texas, 378 U.S. 108 (1964) 9

Brinegar v. United States, 338 U.S. 160 (1949) 7

Carroll v. United States, 267 U.S. 132 (1925) 6

Draper v. United States, 358 U.S. 307, 311 (1959) 7

Farrow v. Maryland, 233 Md. 526, 197 A.2d 434 (1964) .. 9

Gwinn v. State, 201 Ind. 420, 166 N.E. 769 (1929) 9

Hanger v. State, 199 Ind. 727, 160 N.E. 449 (1928) 6

Henry v. United States, 361 U.S. 98 (1959) 6

Hinds v. State, 201 Ind. 563, 170 N.E. 539 (1930) 9

Jones v. United States, 362 U.S. 257, 267 (1960) 5

Ker v. California, 374 U.S. 23, 31 (1963) 6

McCray v. Illinois, — U.S. —, 87 S.Ct. 1056 (1967) 9

Manson v. State, — Ind. —, 229 N.E.2d 801 (1967) 2, 4

Mapp v. Ohio, 367 U.S. 643 (1961) 6

United States v. Peisner, 311 F.2d 94, 5 A.L.R.3d 1196 (4th Cir. 1962) 5

United States v. Smith, 357 F.2d 318 (6th Cir. 1966) 5

United States v. Ventresca, 380 U.S. 102 (1965) 9

MISCELLANEOUS:

3 I.L.E. Arrest and Recognizance § 4, p. 44 9

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QUESTIONS PRESENTED

Respondent has combined the two causes in this matter in one brief since they were tried and convicted as co-defendants, and the same issues are raised as pertaining to both.

Respondent restates the questions presented and raised in the two Petitions as follows:

1. Do the constitutional protections afforded a defendant by the Fourth Amendment to the United States Constitution, and applied to the states through the Fourteenth Amendment to the United States Constitution, preclude the use of evidence discovered as a result of a search incidental to an arrest, where the "probable cause" forming the basis of the arrest was a radio dispatcher's message based on the report of a person who was informed by other unnamed persons that two "colored subjects", had placed stolen merchandise in the trunk of a certain described automobile.

2. Does a guest passenger in an automobile which has been subjected to search and seizure, have standing to suppress any evidence found therein where the evidence obtained may be used against her.

STATEMENT OF THE CASE

The Petitioners were convicted of grand larceny in the Circuit Court of Howard County, Indiana, on April 28, 1965. They were thereafter sentenced to not less than one [1] nor more than ten [10] years imprisonment in the Indiana penal system. The convictions were affirmed on October 2, 1967, by the Indiana Supreme Court, and a rehearing was denied on November 3, 1967. *Manson v. State,* — Ind. —, 229 N.E.2d 801 (1967).

The convictions were based on affidavits dated November 26, 1962, and filed in the Howard Circuit Court. Subsequently on February 5, 1964, the Petitioners filed a motion to suppress, which was overruled on May 13, 1964. The evidence adduced at trial indicated that on November 23, 1962, officer Frank Rose of the Kokomo, Indiana, police

force received a radio message from the police dispatcher that two "colored subjects" were seen placing what was believed to be stolen merchandise into the trunk of a 1960 Oldsmobile with an Indianapolis prefix on its license plate. The person making the report to the police, Donna Umbarger, testified that persons unknown to her had told her that the Petitioners were engaged in shoplifting, and she therefore decided to watch them. She followed them to their car, where she observed them doing a lot of "squirming" and "twisting" around, and then watched them get out of the car with a loaded laundry bag which was placed in the trunk of the car (Tr. p. 116, 169). She thereafter called the police, describing the car including the license plate (Tr. p. 117). Upon his arrival at the shopping center, Officer Rose, located the subjects and after they returned to their automobile and started to leave he placed them under arrest (Tr. p. 109). The search then took place.

REASONS FOR DENYING THE WRIT

Petitioner has failed to comply with Rule 39 of this Court which requires that all briefs be printed. However, respondent does not rely on this objection, but neither does he waive it.

Petitioner has further failed to set forth any grounds under Rule 19 of this Court which would warrant the granting of a Writ of Certiorari to review the decision of the Supreme Court of Indiana. Petitioner has wholly failed to show any conflict among the lower court decisions, or that the decision of the Supreme Court of Indiana is contrary to the decisions of this Court. Neither has the petitioner shown that an important or pressing question of

constitutional law is involved. The Petition for Writ of Certiorari should therefore be denied.

ARGUMENT

THE ADMISSION OF EVIDENCE DISCOVERED BY AN ARRESTING OFFICER IN THE TRUNK OF AN AUTOMOBILE AFTER AN ARREST PURSUANT TO A RADIO DISPATCHER'S CALL, COUPLED WITH A PERSONAL OBSERVATION, DID NOT VIOLATE THE CONSTITUTIONAL TENETS OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

During the course of the pre-trial pleadings, the Petitioners moved to suppress evidence found in the trunk of Petitioner Suber's automobile, consisting of eight men's suits, with price tags still attached, several pairs of men's trousers, and a woman's coat. The trial court overruled this motion and part of this evidence was introduced at trial over defense objections. Petitioner in essence argues only two points: 1) That the search of the trunk incidental to the arrest was unreasonable in that the arrest was not lawful because the officer's "probable cause" for making the arrest was the hearsay report of a police radio dispatcher which was in turn based on hearsay. 2) That Petitioner Manson did have "standing" to move to suppress evidence obtained by an alleged illegal arrest even though she was a mere guest in the automobile.

In regard to this latter point, it is noted that the Indiana Supreme Court in *Manson v. State*, — Ind. —, 229 N.E.2d 801, 803, said:

> "Parenthetically, we may say appellant Manson has no standing to ask that the evidence obtained in the search of the car be suppressed, since she did not own it, and was not in possession or control of it. 25 I.L.E. Search & Seizure, § 5, p. 417.

However, as Petitioner points out, the United States Supreme Court said in *Jones v. United States*, 362 U.S. 257, 267 (1960):

> "* * * No just interest of the Government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. * * * "

It is to be noted that the *Jones* opinion refers to "premises", and it is therefore arguable that this rule was not meant to be extended to automobiles, *United States v. Smith*, 357 F.2d 318 (6th Cir. 1966), however there is authority to the contrary. *United States v. Peisner*, 311 F.2d 94, 5 A.L.R.3d 1196 (4th Cir. 1962). For this reason Respondent, while not conceding the point, does not seriously argue that Petitioner Manson had no right or standing to move for suppression of the evidence obtained from Petitioner Suber's automobile. Petitioner takes this position because the record clearly indicates that Officer Rose arrested both Petitioners Suber *and* Manson at the same time, and the subsequent search was incidental to the arrest of *both* Petitioners. In sum even if Respondent concedes that Petitioner Manson had standing to suppress the evidence, she gains nothing by the concession because the evidence was properly admissible against her because the search and seizure incident to a lawful arrest was not unreasonable,

and evidence resulting therefrom was properly admitted against either defendant.

Thus the sole issue is whether the search was unreasonable in that Officer Rose had no "probable cause" to make the arrests. However there is one factor that must be discussed before the facts are argued, i.e., whether state or federal law controls the issue of "probable cause". This court made clear in *Mapp v. Ohio*, 367 U.S. 643 (1961), that the state courts are required by the United States Constitution to bar the use of evidence obtained in violation of Federal constitutional guarantees against unreasonable searches and seizures. However *Ker v. California*, 374 U.S. 23, 31 (1963), established that the States are not precluded from the development of "working rules" governing arrests, searches, and seizures thereby enabling the states to meet the "practical demands of effective criminal investigation and law enforcement", so long as those "working rules" do not violate the constitutional proscription of unreasonable searches and seizures which render such evidence inadmissible against a party who has standing to complain. With this in mind Respondent turns to the guidelines and rules pertaining to "probable cause" as applied in Indiana and Federal Courts.

It is settled law that "probable cause" for arrest exists where the arresting officer has knowledge of facts and circumstances which he reasonably believes to be trustworthy information, and which is sufficient in itself to warrant a man of reasonable caution to believe that an offense has been or is being committed.

Carroll v. United States, 267 U.S. 132 (1925);
Henry v. United States, 361 U.S. 98 (1959);
Hanger v. State, 199 Ind. 727, 160 N.E. 449 (1928).

And "probable cause" has been defined as a reasonable ground for belief of guilt not necessarily entailing evidence sufficient to justify condemnation or conviction, but meaning more than mere suspicion. It is not a technical concept but rather the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

Brinegar v. United States, 338 U.S. 160 (1949).

It is submitted by Respondent that this case is controlled by *Draper v. United States,* 358 U.S. 307, 311 (1959), where this court was confronted by an accused whose first contention was that the arrest made without a warrant by a federal narcotics agent was based on hearsay, and not competent evidence, and therefore should have been disregarded by the narcotics agent in his decision to arrest the accused, and therefore the agent had no probable cause to make the arrest and subsequent search. The Court in that case said:

> "Considering the first contention, we find petitioner entirely in error. Brinegar v. United States, 338 U.S. 160, 172-173, has settled the question the other way. There in a similar situation, the convict contended 'that the factors relating to inadmissability of the evidence [for] *purposes of proving guilt at the trial,* deprive[d] the evidence as a whole of sufficiency to show probable cause for the search . . .' Id., at 172 (Emphasis added). But this Court rejecting that contention, said: '[T]he so-called distinction places a wholly unwarranted emphasis upon the criterion of admissibility in evidence, to prove the accused's guilt, of the facts relied upon to show probable cause. That emphasis, we think, goes much too far in confusing and disregarding the difference between what is required to

> prove guilt in a criminal case and what is required to show probable cause for arrest or search. It approaches requiring (if it does not in practical effect require) proof sufficient to establish guilt in order to substantiate the existence of probable cause. There is a large difference between the two things to be proved [guilt and probable cause], as well as between the tribunals which determine them, and therefore a like difference in the *quanta* and modes of proof required to establish them. 338 U.S. at 172-173.' "

Petitioners are urging that whenever a report or call is received by a police officer from a radio dispatcher, that a person or persons of a certain description, and/or occupying a certain type of vehicle, have committed, or are committing a crime, that officer, in order to perfect a valid arrest, must check the sources of the dispatcher's report, and the failure to do so renders the arrest void for lack of "probable cause". It is readily apparent that such an approach to the validity of arrests would be a great boon to the criminal element. No longer would "roadblocks", or "crime alert calls", or similar tactics employed by modern police forces and based on police dispatcher's communications be workable methods of investigation and operation. In effect this would tie the law enforcement officials' hands and create a situation tantamount to an open door policy for the commission of crime by use of the automobile. Under the rule as seemingly proposed by Petitioner, the felons would be two counties away and "moving on", by the time any corroborating investigation could be made concerning the police dispatcher's report or call.

Indiana law of course is contrary to the position taken by Petitioner, and clearly in line with Draper. Thus in Indiana as under Federal law an officer may ground his

"reasonable and probable cause for belief" on information furnished by another party, and the question to be determined is not the positive establishment of the guilt of the defendant of the criminal offense, but merely whether "reasonable and probable cause existed for believing" that a person had in his possession some evidence of the commission of a crime, i.e., the property alleged to be taken *Gwinn v. State*, 201 Ind. 420, 166 N.E. 769 (1929), and this would be true even if a third party had furnished the information to the informant *Hinds v. State*, 201 Ind. 563, 170 N.E. 539 (1930); 3 I.L.E. Arrest and Recognizance § 4, p. 44.

Petitioner has relied on four cases as authority supporting his argument. Respondent submits that those cases are not controlling of the facts and issues at bar. The first two cases, *Aguilar v. Texas*, 378 U.S. 108 (1964) and *United States v. Ventresca*, 380 U.S. 102 (1965) are distinguishable on their facts and their issues. Both of those cases dealt with the proposition that affidavits supporting a search warrant must be supported by other information to which the magistrate may look prior to issuing a warrant. *Ventresca* merely clarified *Aguilar*, and noted that there are exceptions to the rules as laid down in *Aguilar etc.*, where seizure is impossible except without a warrant [note 2, p. 745]. Petitioner's third case, *McCray v. Illinois*, — U.S. —, 87 S.Ct. 1056 (1967) was concerned with the issue of disclosure of an informant's name. The Supreme Court held that disclosure was not necessary, and upheld a search incidental to a lawful arrest even though it was based on hearsay. The case of *Farrow v. Maryland*, 233 Md. 526, 197 A.2d 434 (1964), the last case cited by Petitioner, is seemingly one which he did not wish to cite since it is di-

rectly contra to the position he is urging upon the court. In that case the court upheld as based on probable cause an arrest of a subject who was described over a police dispatcher's call. The court in speaking of the hearsay issue very succinctly pointed out the true rule.

> "* * * We note that in many cases coming before this Court where the lawfulness of an arrest and of a search incidental thereto are in issue, direct evidence to show the basis upon which the arresting officers acted either is not offered at all, or is alluded to guardedly as 'information received' or in some other and equally uninformative manner (doubtless designed to avoid an objection that it is hearsay), or is actually excluded as hearsay. On the question of guilt or innocence of the defendant it clearly is hearsay and hence is inadmissible; but on the issues of probable cause and the lawfulness of arrest and of admissibility of evidence obtained through any search made in connection with the arrest, such testimony, even if hearsay, is directly relevant and admissible. * * * " p. 532

In summation Petitioner has not shown that the information and report, issued by a radio dispatcher on the report of shoplifting by person or persons unknown, is insufficient to form a basis for "probable cause" to arrest subjects who have been identified by both their personage, and their automobile. Under these facts no constitutional violations of either the Fourth or Fourteenth Amendments to the United States Constitution have been shown.

CONCLUSION

Petitioner has failed to present a question of sufficient merit under Rule 19 of this Court to warrant review of the decision of the Indiana court.

WHEREFORE, respondent prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,

JOHN J. DILLON
Attorney General of Indiana

DENNIS J. DEWEY
Deputy Attorney General
Attorneys for Respondent

219 State House
Indianapolis, Indiana
Phone: 633-5512